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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.         | CONFIRMATION NO.       |
|--|-------------|----------------------|-----------------------------|------------------------|
| 10/725,857   | 12/01/2003  | Sharon Lesk          | 7288-102/10312532           | 2832                   |
| 167 7590 11/27/2007<br>FULBRIGHT AND JAWORSKI LLP<br>555 S. FLOWER STREET, 41ST FLOOR<br>LOS ANGELES, CA 90071 |             |                      | EXAMINER<br>GEHMAN, BRYON P |                        |
|  |             |                      | ART UNIT<br>3728            | PAPER NUMBER           |
|  |             |                      | MAIL DATE<br>11/27/2007     | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/725,857

Applicant(s)

LESK ET AL.

Examiner

Bryon P. Gehman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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1. The abandonment mailed October 3, 2007 has been vacated in view of the request for continued examination that crossed in the mail with the abandonment. This application has not been abandoned.

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 28, 2007 has been entered.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-11 and 12-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 1 and 8, line 2 of each, the phrase "receptacle for receiving in a motor vehicle drink holder" is indefinite as to its meaning, as it is unclear what arrangement or potential arrangement is meant to be distinguished. The statement is indefinite.

In claim 10, line 3, "one or more prongs" is alternative and therefor indefinite, and should be --at least one prong--.

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5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 4-5, 7 and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Gory (2005/0051689). Claims 1, 4-6, 12 and 19-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Lindsay (6,832,745). Claims 1, 7 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Gish (4,901,961). Each discloses a container comprising a receptacle (12; 62; flower pot of column 1, lines 12-22; respectively) for receiving in a potential motor vehicle drink holder (11; 20; 18), the receptacle comprising a closed bottom, a top with an opening and a sidewall that connects the bottom and the top, and means (20; bottom of 62; bottom of the flower pot) contacting the bottom of the receptacle for supporting a plant stem. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

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As to claim 4, Gory and Lindsay each disclose a ring (30; at 24).

As to claims 5-6 and 19-20, Gory and Lindsay each disclose the ring as detachable from a vehicle, and Lindsay discloses a groove (at 30).

As to claim 7, Gory and Gish each disclose the container configured to stand on its own when removed from a drink holder.

As to claim 12, the container bottom of Lindsay and Gish is permanently connected to the bottom of the container.

As to claim 13, the supporting means of Gory is detachable from the bottom of the receptacle.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-2, 4-9, 13, 15 and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ho (5,947,322) in view of Sakamoto (3,477,175). Ho discloses a container comprising a receptacle (1) capable of being received in a motor vehicle drink holder, the receptacle comprising a closed bottom, a top with an opening and a sidewall that connects the bottom and the top. Sakamoto discloses a plant stem supporting means (14) comprising a set of prongs (24) disposed in a plant stem receptacle. To modify the container of Ho employing the prongs of Sakamoto would have been obvious

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in order to support plant stems, as suggested by Sakamoto. The variable whether the container of Ho is capable of being received in a motor vehicle drink holder pertains to its size, and to any degree the container of Ho is not inherently sized corresponding to being received in a drink holder, to size either a container or a drink holder sufficient to have the one fit in the other would have been obvious, as plant containers of a size to be capable of being received in a conventional drink holder have been long known in the art. Size of a plant container is not seen to be an inventive step.

As to claim 4, Ho discloses a ring (2).

As to claims 5-6 and 9, Ho discloses the ring as detachable and having a groove.

As to claim 7, Ho discloses the container configured to stand on its own if removed from a drink holder.

As to claim 8, the receptacle is cup-shaped.

As to claims 13, 15 and 23, Sakamoto disclose the supporting means (14) being removably connected at the bottom of its receptacle.

9. Claims 3, 12, 14, 16 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 1, 1, 2, 3 and 8 above, and further in view of Stone (2,057,856). Stone discloses a plant stem supporting means comprising a frog (10) that is permanently connected to its container. To modify the plant container of Ho employing the frog of Stone would have been obvious in order to support the plant stems, as suggested by Stone.

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As to claims 12, 14 and 16, Stone discloses the supporting means (10) being permanently connected to the bottom of the receptacle. To provide the supporting means as a permanent connection would have been obvious to maintain the supporting means with the receptacle.

10. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 3 above, and further in view of either one of Sakamoto and Luiperseek. Sakamoto and Luiperseek each disclose a flower supporting means that is removably connected to its container. To modify the permanent frog of Stone by rendering it removable similar to either one of Sakamoto and Luiperseek would have been obvious in order to make its use selective, as in the manner of Sakamoto and Luiperseek.

11. Claims 18, 21, 24 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as employed against claims 6 and 9 above and further in view of Holtkamp Jr. (5,477,640). Holtkamp discloses a detachable grooved ring (12 or between 14 and 22) disposed about the top of a plant and having a groove (containing 32 or containing 12) extending completely around the ring. To modify the plant container of Ho employing the ring with a groove as taught by Holtkamp Jr. would have been obvious in order to provide an air freshener capability to the plant container, as suggested by Holtkamp Jr..

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12. Claims 19-20 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as employed against claims 6 and 9 above and further in view of Matthews (6,516,563). Matthews discloses a detachable grooved ring (24) disposed about the top of a plant and having a groove (30 and/or 32) that is discontinuous or extends partially around the ring. To modify the plant container of Ho employing the ring with a groove as taught by Matthews would have been obvious in order to provide an adjustable container for nutrients for the plant, as suggested by Matthews.

13. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ho in view of Sakamoto. Ho discloses inserting a plant part into a cup-shaped container (1) and placing the container in a motor vehicle drink holder (3 or 1). Sakamoto discloses a plant stem supporting means comprising a set of prongs (24) disposed in the bottom of a plant container. To modify the plant container of Ho employing the prong-teaching of Sakamoto would have been obvious in order to better support the plant stem, as suggested by Sakamoto. To place any cup-shaped receptacle of appropriate size within a conventional drink holder in a vehicle would have been obvious, as the configuration of the drink holder would obviously suggest the same to one of ordinary skill in the art of drink holders.

As to claim 11, to subsequently remove the plant container from the drink holder to display the plant container externally of the motor vehicle would have been an obvious manipulation to one of ordinary skill in the field of using plant containers.




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14. Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection, as explained in detail above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Tuesday through Thursday from 7:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bryon P. Gehman  
Primary Examiner  
Art Unit 3728

BPG